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MAILED

DEC 15 2010

OFFICE OF PETITIONS

In re Patent No. 7,311,249 :
Issue Date: December 25, 2007 :
Application No. 10/758,429 : DECISION ON PETITION
Filed: January 16, 2004 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 62941.002006 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 6, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed non-provisional applications set forth in the amendment filed with the petition by way of certificate of corrections.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the above-noted, prior-filed applications on page one following the title is not acceptable as drafted because Application No. 10/712,182 does not claim benefit of 10/253,243, and Application No. 10/732,641 does not claim benefit of 10/253,243. Further, petitioner has not provided an amendment with a request to change the first sentence to add the benefit claims. See MPEP 201.11(III).

As authorized the \$1,410 petition fee and \$100 fee for the certificate of corrections has been charged to petitioner's credit card.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matters are required.

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this matter may be directed to April M. Wise at (571) 272-1642.

/dab/
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